

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
National Exchange Carrier Association (NECA))	
Petition for Interim Waiver and Rulemaking)	CC Docket No. 98-67
Regarding Cost Recovery for Wireless)	
Telecommunications Relay Service (TRS) Calls)	
)	

**COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.**

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Telecommunications for the Deaf, Inc. (“TDI”) hereby submits these Comments in response to the National Exchange Carrier Association, Inc.’s (“NECA”) Petition for Interim Waiver and Rulemaking (“Petition”) regarding compensation of telecommunications relay service (TRS) providers for calls placed from wireless telecommunications devices.¹

TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late-deafened, and deaf-blind. TDI’s mission is to promote equal access to broadband, media and telecommunications for these constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy. Only through equal access will these twenty-eight million Americans be able to enjoy the opportunities and benefits

¹ *In the Matter of Provision of Improved Telecommunications Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Petition for Interim Waiver and Rulemaking, filed July 22, 2002 (“Petition”). The Commission subsequently released a Public Notice establishing a comment cycle on the Petition. *Public Notice*, National Exchange Carrier Association (NECA) Petition for Interim Waiver and Rulemaking Regarding Cost Recovery for Wireless Telecommunications Relay Service (TRS) Calls, DA 02-2136 (rel. Aug. 30, 2002).

of the telecommunications revolution to which they are entitled. Furthermore, only by ensuring equal access for all Americans will society benefit from the myriad of skills and talents of persons with disabilities.

TDI supports NECA's Petition. As with IP Relay, because the jurisdiction of calls placed to or from wireless handsets cannot be determined solely from automatic number identification ("ANI"), TDI believes flexible application of the Commission's jurisdictional cost separation rules is warranted for wireless calls to facilitate reimbursement and ease of use. Such action would also be consistent with past Commission decisions for other TRS services. Accordingly, TDI believes the Commission should fund wireless TRS calls from the interstate fund on a three-year interim basis.

I. SECTION 225 ENABLES THE FCC TO CONCLUDE THAT ALL COSTS FOR WIRELESS TRS CALLS SHALL BE REIMBURSABLE FROM THE INTERSTATE TRS FUND.

Section 225 of the Communications Act of 1934, as amended, governs provision of TRS. "[T]he overall purpose of Section 225 is to 'ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner, to [individuals with hearing and speech disabilities] in the United States.'"² Section 225(d)(3)(B) provides that the TRS regulations "shall *generally* provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction."³ As the Commission previously concluded with respect to video relay interpreting ("VRI"),

² *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, rel. April 22, 2002, ¶ 10 (citing 47 U.S.C. § 225(b)(1)) ("*IP Relay Order*").

³ 47 U.S.C. § 225(d)(3)(B) (emphasis added).

Section 225's own terms do not require the Commission to impose strict jurisdictional cost separation in all cases. In the VRI proceeding, the Commission stated it "believe[s] the word 'generally' [in Section 225(d)(3)(B)] gives [it] some discretion to fund intrastate service from the interstate jurisdiction."⁴

As NECA observes, the FCC has previously found it necessary to exercise this discretion and fund certain types of intra- and interstate TRS services solely from the interstate TRS fund, and the FCC should again use such discretion to fund wireless services from the interstate TRS fund. With respect to VRI, the Commission found that authorizing interstate funding was necessary to be "consistent with [Section 225(d)(2)'s] mandate," to promote its deployment, and to improve the efficiency of the service.⁵ Further, the Commission recently concluded to fund IP Relay calls from the interstate TRS fund on an interim basis.⁶ Among other reasons, the Commission based its decision on the inability of IP Relay carriers to determine whether calls are intrastate or interstate in nature.⁷ The same issue exists with respect to wireless calls,

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 15 FCC Rcd 5140, 5154 (2000) ("VRI Order").

⁵ *VRI Order*, 15 FCC Rcd at 5154. In the *VRI Order*, the Commission encouraged VRI deployment in a variety of ways: "[I]n order to encourage [VRI] technology, as is our statutory mandate . . . we intend to establish special funding arrangements for VRI to speed its development. During the development of this new relay service, we will permit recovery of costs associated with both intrastate and interstate calls from the interstate TRS Fund. . . . We also believe our approach will reduce costs and spur industry and consumer investment in the equipment and technologies necessary to use VRI, without burdening state relay programs." *Id.* at 5153. On efficiency, the Commission stated, "[i]t is not efficient to have relay interpreters associated with one state or an interstate relay center with down time while there are people throughout the country who want to make calls through VRI but cannot because of the jurisdictional cost recovery rules." *Id.* at 5154.

⁶ *IP Relay Order*, ¶ 20.

⁷ Because IP Relay calls come via the Internet, and Internet addresses have no geographic correlates, there is currently no automatic method by which an IP Relay provider can determine whether a given call is either intrastate or interstate. *IP Relay Order*, ¶ 5.

because there is currently no way to automatically verify that a wireless user is physically located in the jurisdiction corresponding to a wireless device's ANI.⁸

Further, as NECA notes, dramatically increased usage of wireless telecommunications services over the past few years has exposed certain situations where individuals with hearing and speech disabilities experience difficulty or inconvenience completing wireless TRS calls as a result of cost recovery issues.⁹ For example, as NECA describes, while nationwide access to relay service via 711 dialing has been a tremendous benefit to TRS users, customers using wireless phones while traveling outside their home states have encountered problems placing 711 calls to numbers located within their home states.¹⁰ Also, because wireless customers in a given state may be served by a switch physically located in a nearby neighboring state, certain intrastate calls may actually appear to be interstate.¹¹

To remedy these issues in the short-term, TDI supports NECA's proposal to fund wireless TRS services from the interstate TRS fund. Because of the unique jurisdictional issue presented by wireless calls, TDI believes the Commission is justified in making wireless service an exception to Section 225(d)(3)(B)'s general requirement to separate costs jurisdictionally. Because technological advancements such as the proliferation of wireless services for TRS were likely unforeseen when Section 225(d)(3)(B) was enacted, TDI believes this exercise of

⁸ As NECA observes, since most wireless phone usage is in addition to residence or business wireline telephone usage, the inference can be drawn that in most cases wireless calls originate from somewhere other than those locations. *See* Petition at 4.

⁹ *See* Petition at 4.

¹⁰ "A TRS call originating from a wireless phone issued in a given state and carried to a distant state may appear to the local relay service to be an intrastate call between two subscribers in a different state. Since many relay services are only authorized to process intrastate calls between callers in the state for which the provider is contracted for service, the relay service would not be paid if it handled this type of call." Petition at 5.

¹¹ *See* Petition at 5.

discretion is particularly appropriate. Further, in addition to the jurisdictional issue supporting the Commission's use of discretion, TDI believes interstate-only funding is the best way to facilitate wireless TRS use and improve the efficiency of the service in order to maximize the benefits of this technological innovation to the deaf community and the hard of hearing population, and their respective contacts.

Moreover, as evidenced by prior Commission decisions in the VRI and IP Relay proceedings, the Commission undoubtedly values functionally equivalent access to innovative services as a more important public objective than jurisdictional separation of costs. Section 225(d)(2) directs the Commission to "ensure that regulations prescribed to implement this section encourage . . . the use of existing technology and do not discourage or impair the development of improved technology in the delivery of relay services."¹² As discussed above, strict adherence to jurisdictional cost separation can, in some circumstances, have the unintended consequence of complicating use of wireless services, contrary to Section 225(d)(2), to the detriment of users. The Commission should not compromise the higher equal access goals of Section 225 through an unduly strict interpretation of its jurisdictional cost separation provisions, particularly when the cost provisions have built-in flexibility to avoid such a result. To realize Congress' vision and fulfill the intent of Section 225, the Commission must facilitate equivalent access to wireless services through interstate funding in order to bring all the benefits of this innovative service to the disability community.

¹² 47 U.S.C. § 225(d)(2).

II. DISTINGUISHING INTRA- AND INTERSTATE CALLS THROUGH USER PROFILES OR A FIXED ALLOCATOR WOULD BE INADEQUATE AS WELL AS UNDULY BURDENSOME TO USERS.

As discussed above, TDI believes Section 225 affords the Commission sufficient discretion to implement interstate funding for wireless services. In other proceedings, however, the Commission has suggested alternate means to distinguish whether calls are intra- or interstate, such as creation of a user profile or use of a fixed allocator.¹³ While NECA's Petition neither advocates nor even mention these alternatives, because they have been raised in other similar proceedings, TDI wanted to discuss them briefly here. TDI believes these alternatives are undesirable because they would likely fail to yield accurate call-identifying information while also placing undue burdens on TRS users.

TDI believes that user profiles would not be an accurate means of determining wireless TRS call jurisdiction because of the mobile nature of wireless service. Moreover, users may consider their use to be inconvenient or an invasion of privacy because there is no commensurate profile requirement for use of traditional TRS. Although assigning a fixed allocator to wireless calls may be somewhat less intrusive to users than user profiles, TDI questions the Commission's ability to develop an accurate fixed allocator for this admittedly narrow category of service. TDI does not have sufficient evidence to determine whether intra- and interstate calling patterns for traditional TRS necessarily translate to wireless calls, or whether non-TRS wireless calling patterns are similar to that of wireless TRS. In order to form a reasonable basis for a fixed allocator, TDI believes the Commission would have to collect empirical evidence from a sampling of wireless users regarding the nature of their calls, which, again, may be viewed as inconvenient and an invasion of privacy, as well as being somewhat inaccurate. Thus,

¹³ See, e.g., *IP Relay Order*, ¶ 43.

TDI believes the least burdensome, most effective way to maintain the functional equivalence of wireless TRS while also remedying the issues related to cost recovery is to implement an interstate-only cost recovery scheme.

III. TDI BELIEVES THE COMMISSION SHOULD ADOPT AN INTERSTATE FUNDING MECHANISM FOR WIRELESS SERVICES FOR A THREE-YEAR PERIOD.

Although TDI believes interstate cost recovery is appropriate at this time, TDI believes it would be prudent for the Commission to implement the interstate funding mechanism for a three-year period and to revisit this allocation methodology periodically after this time.¹⁴ TDI believes a three-year period provides the appropriate balance of regulatory certainty and flexibility. This schedule would facilitate the implementation and use of wireless services, while providing the Commission a ready vehicle to alter the cost allocation scheme should technological advances or other circumstances make it reasonable to do so. Future innovations may enable ready determination of the jurisdiction origin of such calls, or distinctions between intra- and interstate calling may become blurred over time. Periodic Commission review of the cost allocation scheme, however, will help ensure that the Commission's regulations remain responsive to the needs of the disability community and promote equal access to innovative telecommunications services.

IV. CONCLUSION

TDI supports NECA's Petition seeking cost recovery for wireless services from the interstate TRS fund. TDI respectfully submits that such action is squarely within the bounds of Section 225 and consistent with prior Commission decisions. Not only does the Commission have the discretion under Section 225(d)(3)(B) to deviate from strict jurisdictional separation of

¹⁴ Similarly, the Commission declined to make interstate funding of VRI permanent. *See VRI Order*, 15 FCC Rcd at 5154.

costs, but it has the obligation under Section 225 to encourage the availability of relay services in the most efficient manner. To ensure that its regulations remain responsive to the needs of the deaf community and hard of hearing population, and consistent with the latest technology, TDI asks the Commission to implement an interstate cost allocation scheme for a three-year period and to periodically review it thereafter.

Respectfully submitted,

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